

Certificate of Need Workgroup
Thursday, March 27, 2014 – 9:30am, Capitol View Building
201 Townsend Street, Lansing, MI 48913

AGENDA

9:30am	I. Call to order Quick introductions of any new attendees Approve February 13, 2014 minutes Review and approval of the agenda	Chair
9:35am	Report/recommendations of subgroup regarding Section 10(2) and 10(3) of the comparative review criteria for Medicare and Medicaid (see January 16 and February 13, 2014 meeting minutes)	Sub-group members
9:50am	II. Discussion and decisions related to <ul style="list-style-type: none">• Medicare/Medicaid subgroup recommendation• Comments and recommendations to Section 10 updates (highlighted in yellow)• Ranking/weighting of comparative criteria• Other discussion	All
10:50am	III. Discussion/comments on CON standards language updates (the changes to current standard language are highlighted in yellow)	Dept. Staff/All
10:55am	III. Discussion and recommendations regarding remaining CON charges: <ul style="list-style-type: none">#2 (Section 7 of the standards)#3 (Section 8 of the standards)#5-technical changes	All
11:25am	V. Summary of next steps and any homework or subgroup assignments	All
11:30am	VI. Adjourn Next scheduled meeting (if determined necessary): Tuesday, April 8, 2014, 9:30am – 11:30am, Capital View Building	Chair

MEMO

To: CON Commission
From: Karen J. Messick, MPA, LNHA
CON Workgroup Chair
Date: March 18, 2014 CON Commission meeting
RE: CON Workgroup update

The CON Workgroup has gathered three times: December 18, 2013, January 16, 2014, and February 13, 2014. Our next meeting is scheduled for Thursday, March 27, 2014.

The workgroup was tasked with five charges. Charge 1 was to consider modifications to the comparative review criteria. By group decision, we have spent the majority of our efforts on this charge. Currently, we have formed a sub-group to work on a recommendation with regard to Section 10(2) and 10(3) of the comparative review criteria that concerns Medicare and Medicaid certification. The sub-group has reported to me that they will make their recommendation at the March 27th workgroup meeting.

Another sub-group was formed and has presented their recommendation for Section 10(5) of the comparative review criteria regarding culture change.

The Department has been very helpful. Spreadsheets were created to show all the comparative review criteria, scoring, etc. Other supporting information has also been provided by the department to help us in our discussions. We are using the spreadsheets to work through Section 10 of the comparative review and will develop final recommendations accordingly.

Our intention for spending the amount of time we have on Charge 1 is to ensure we are making recommendations that not only make sense now but also in the future as health care reform begins to make its mark on skilled beds.

We have been keeping Charges 2 and 3 in front of us as we work on comparative review criteria. We intend to move fairly quickly through Charges 2 and 3 once we have completed the work on Charge 1.

At the February 13, 2014 CON Workgroup meeting, The Hospice and Palliative Care Association of Michigan presented a letter and recommendation to the Chair and the workgroup asking that Charge 4: "addition of 130 beds to the special pool for hospice" be removed from our charge list. I have attached a copy of the letter for the CON Commission with this report update. The workgroup agreed unanimously with the recommendation to remove Charge 4.

We are hoping to complete our work at the March 27th meeting; however, we have scheduled two additional dates for April and May should we need them. The goal is to present the final written recommendations at the June 12, 2014 CON Commission meeting.

I apologize that I am unable to attend the March 18th meeting to present this update. I will be attending a conference and will not be available. I am comfortable and confident with any of the department staff providing any additional details.

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Summary of February 13, 2014 Meeting

I.	Call to order Quick introductions of any new attendees Approval of the January 16, 2014 “minutes” Review and approval of the agenda Charge #4: Hospice beds update and recommendation
	<p>Chair, Karen Messick, called the meeting to order at 9:34 am. Attendees, including Department staff, provided brief introductions. See separate attendance sheet for participants.</p> <p>The summary of the January 16, 2014 meeting of the Workgroup was reviewed by the Workgroup participants and approved.</p> <p>The agenda was reviewed and approved by consensus of the Workgroup.</p> <p>With respect to Charge #4, Ms. Messick indicated that the Michigan Hospice and Palliative Care Association requested reconsideration of Charge #4. Melissa Cupp, representing the Association, indicated that due to ongoing discussions on the hospice issue with MDCH, it was suggested that Charge #4 and request for more hospice beds be withdrawn. A recommendation was made withdraw Charge #4 and there was consensus of the Workgroup to that effect.</p>
II.	Update on sprinkler compliance
	<p>Ms. Messick provided an update as to her research with the Department of Licensing and Regulatory Affairs (“LARA”) as to the number of nursing homes not currently in compliance with federal Medicare sprinkler requirements. She reported that, based on information from LARA, all existing Michigan nursing homes have sprinklers. Additionally, any newly constructed nursing homes would be required to satisfy these requirements.</p> <p>Accordingly, it was the consensus of the Workgroup that it was not necessary to include compliance with sprinkler requirements in the comparative review criteria.</p>

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	Report/recommendations of subgroup regarding Section 10(2) and 10(3) of the comparative review criteria for Medicare and Medicaid (see January 16, 2014 meeting summary)
	<p>With respect to Section 10(2) of the Standards (Medicare/Medicaid criteria), Pat Anderson, HCAM, reported that the subgroup on these issues met and had a robust discussion regarding access, different operating models of long-term care facilities (focus on post-hospital discharge vs. long-term stay), and other factors. The subgroup examined data as to occupancy of nursing home beds and Medicaid access, which suggested that adequate Medicaid beds are available. The subgroup also discussed accountability issues regarding applicants pledging to serve Medicaid beneficiaries and certifying all beds for Medicaid but then limiting Medicaid admission, which appears to be a Medicaid policy issue and not a CON issue per se.</p> <p>There was discussion by the Workgroup as to the project delivery requirements in Section 11 of the Standards and that MDCH has limited ability to enforce promises made in response to the comparative review criteria unless these are included in Section 11 as a project delivery requirement. See Section 11(a), which could say “including the requirements of Section 10” and Section 11(b). It was noted that enforcement also could be enhanced through the CON annual statistical questionnaire process by requiring self-reporting on compliance. Other considerations included how to address obsolescence of the CON Standards so that compliance with comparative review criteria may not be relevant in the future. It was noted that the State should have sufficient discretion to deal with non-compliance. Ms. Messick encouraged the subgroup to continue to work on the criteria given the enforcement issue may be beyond the scope of the Workgroup.</p>
	Report/recommendation regarding Section 10(4) of the comparative review criteria for outstanding debt obligation to the state and language for contesting such obligation
	<p>Ms. Messick reported as to her investigation of whether the comparative review criteria should provide for outstanding quality assurance assessments if such assessment were being contested. She is continuing to work through that issue with MDCH and will provide an update at the next meeting.</p>

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Report/recommendation of subgroup regarding Section (5) of the comparative review criteria: Culture Change (see January 16, 2014 meeting summary)
<p>Ms. Beniak reported on the discussions on the subgroup on culture change criteria. Specifically, these criteria were discussed with Ms. Wendy Middleton and Ms. Cean Eppelheimer, Michigan Public Health Institute, (MPHI) as to whether the current criteria and CON-217A worksheet were still relevant. There was a recommendation to remove Wellspring as a MDCH-approved culture change model given Wellspring was acquired by Eden. Additionally, the PHI Coaching Approach has emerged as a respected culture change program so the criteria/CON-217A form should be changed to reflect this development.</p> <p>The Workgroup discussed the point differential in the current comparative review criteria as to MDCH-approved vs. non-MDCH approved culture change programs. There was concern expressed that some organizations may have developed their own “home grown” culture change programs that offer the same quality and other benefits to recipients of nursing home services as the national MDCH-approved programs. Ms. Beniak noted that based on her discussions with Ms. Middleton, MPHI would endorse some “home-grown” programs. Discussion ensued as to the practicality of enforcing criteria allowing such programs.</p> <p>It was noted that the MDCH-approved programs are geared toward long-term stay facilities and not practical for facilities focused on post-hospital discharge/rehabilitative admissions. There was further discussion as to whether culture change was too heavily weighted under the comparative review criteria. Comments also were made as to the point differential for existing vs. proposed culture change programs. It was noted that organizations using national culture change programs (e.g., the MDCH-approved programs) pay a lot to receive that national program endorsement.</p> <p>Following the above discussion, by consensus of the Workgroup, the following recommendations were made as to revisions to the CON Standards:</p> <ul style="list-style-type: none">• Change “Department-approved” to “Department-recognized” with respect to culture change programs described in CON 217-B• Add PHI Coaching Model to the list of Department-recognized culture change programs• Eliminate differential between existing and proposed by simply awarding 5 points for a proposed or existing culture change

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	<p>program that satisfies the MDCH criteria in CON 217-B</p> <ul style="list-style-type: none"> • Change number of points awarded for Department-recognized culture change program from 5 to 3 points • Set maximum number of points for culture change at 8 points • Conform language in CON 217-B to the revised criteria <p>It was agreed that the Workgroup may need to re-consider the point allocations noted above upon concluding discussion of all of the comparative review criteria.</p>
III.	Discussion and decisions related to recommendations by the Sub-groups. Note: Section 6 and 10 criteria or semantic changes will be considered in this discussion.
	A. Section 10(2) (percentage of Medicaid patient days and percentage of Medicaid certified beds) and 10(3) Medicare certification
	Subject to further subgroup discussions and recommendations. Next subgroup meeting on February 13, 2014, immediately following Workgroup meeting.
	B. Section 10(4) (quality criteria with a 3-year look-back)
	<ul style="list-style-type: none"> • Section 10(4)(a): language to be removed because already covered in Section 6 of the Standards. • Section 10(4)(f): remains under discussion/review as to no “outstanding debt obligation to the state of Michigan for quality assurance assessment . . . ” with the question being what if the quality assurance assessment is being contested in a legitimate manner.
	C. Section 10(5) Culture Change
	See recommendations under Agenda Item II regarding the subgroup on culture change.
IV.	Discussion and preliminary recommendations regarding CON charges: #2 (Section 7 of the standards), #3 (Section 8 of the

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	standards) , #5- technical changes
	<p>The Workgroup discussed percentage of cash under Section 10(6). Questions addressed who is the “applicant” and what is “applicant’s cash” when a new entity has not been capitalized or funding is coming from a parent company. Leases were also discussed along with MDCH’s position that lease payments did not qualify as cash because they were paid from future operating revenue. It was agreed that the point of cash was financial feasibility and wherewithal of an applicant to complete a proposed project. Also, should an applicant be required to have the cash in an account that can be demonstrated to MDCH at the time of the application? A comment was made as to older buildings and how cash projects tie up cash unnecessarily. The question was raised as to how percentage of cash tied out to audited financial statements of the applicant and/or parent company. The Workgroup discussed what other criteria may address financial feasibility. What about delays by an applicant in implementing other CON-approved projects? A suggestion was made to combine Sections 10(6) and 10(11) into a single new section on financial feasibility with criteria to be developed by the Workgroup.</p> <p>With respect to Section 10(8), air-conditioning, there was discussion as to whether air conditioning should be required in the entire facility or just the proposed project. What about the culture change aspect of residents being able to adjust the temperature of their environment? Should individual controls receive more points? Ms. Shanlian, LARA, indicated that facilities that are too cold more typically results in deficiency citations than facilities that are too warm. There was also discussion as to whether an applicant should receive extra points for bringing an existing facility up to air conditioning standards/implementing an air conditioning system. It was noted that for new construction, air conditioning is mandatory. The question also was raised as to whether additional points should be awarded for individually controlled units/in-room thermostats or other comparable systems that allow individual control.</p> <p>There was limited discussion of three and four-bed wards under Section 10(13) and discussion that co-habitation may be an important consideration as to the points for private rooms under Section 10(9), particularly with married couples and dementia residents.</p>
V.	Summary of next steps and any homework or subgroup assignments
	<ul style="list-style-type: none">• Ms. Messick reviewed the subgroup assignments and outstanding issues.• Ms. Messick noted that the next meeting would be on March 27, 2014.

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V.	Adjourn
	The meeting was adjourned at 11:32 pm.

Prepared and respectfully submitted by Phyllis Adams, Dykema Gossett

Relates to a New Facility	Relates to an Existing Facility	Criteria	Workgroup Proposed Changes	Points Deducted	Points Awarded		Proposed Points	
					Max	Min	Max	Min
	X	The current percentage of Medicaid patient days of care reimbursed for the most recent 12 months 10(2)(a)(i)			10	6**		
X		The proposed percentage of Medicaid patient days of care to be reimbursed by the second 12 months after project completion 10(2)(a)(ii)			5	3**		
	X	Percentage of the licensed nursing home beds are Medicaid for the most recent 12 months 10(2)(b)(i)			9	4**		
X		Percentage of the proposed licensed nursing home beds to be Medicaid certified by the second 12 months after project completion 10(2)(b)(ii)			7	2**		
X	X	Participation level in the Medicare program for the most recent 12 months 10(3)			3	1		
X	X	Currently as identified by the Centers for Medicare and Medicaid Services been a Special focus NH-LTCU 10(4)(a)	Workgroup decided to delete from Comparative Review	15			0	0
X	X	Has within the last 3 years as identified by the Centers for Medicare and Medicaid Services been a Special focus NH-LTCU 10(4)(b)		15				
X	X	Has had more than 8 substandard quality of care citations; immediate harm citations, and/or immediate jeopardy citation in the 3 most recent survey cycles 10(4)(c)		15				
X	X	Has had an involuntary termination or voluntary termination at the threat of a medical assistance provider enrollment & trading partner agreement within the last 3 years 10(4)(d)		15				
X	X	Has had a state enforcement action resulting in a reduction in license capacity or a ban on admissions within the last 3 years 10(4)(e)		15				
	X	Has any outstanding debt obligation to the state of Michigan for quality assurance assessment program (QAAP), civil monetary penalties (CMP), Medicaid level of care determination (LOCD), or preadmission screening and annual resident review (PASARR) 10(4)(f)		15				
X	X	Participation in a cultural change model, which contains person centered care, ongoing staff training , and measurements of outcomes 10(5)	MDCH will Remove Wellspring model from worksheet, correct Coaching model to state PHI Coaching Approach; Workgroup changed the maximum scoring: 5 points for participating in a culture change mode, 3 more for an approved model.		15	0	8	0
X	X	The proposed percentage of the "Applicant's cash" to be applied towards funding the total proposed project cost 10(6)	Workgroup is getting more information about this definition and considering grouping this criteria with 10(11)		5	0		
X	X	Equipped with sprinklers 10(7)	Workgroup decided to remove from Comparative Review as all buildings are sprinkled as of 12/2013		5	0	0	0
X	X	Equipped with air conditioning 10(8)	Waiting for Engineering input		5	0		
Facility Design:								
X	X	100% private rooms with adjoining sink, toilet. And shower 10(9)	Waiting for Engineering input		10	0		
X	X	Nursing Home/HLTCU with a 150 or fewer beds 10(10)			10	0		
X	X	Provides audited financial statements 10(11)			5	0		
X	X	Proposed beds are housed in new construction 10(12)			5	0		
	X	Existing nursing home/HLTCU eliminates all of its 3- and 4-bed wards 10(13)	Changed to eliminate 3 OR MORE bed wards		10	0		
X	X	On or readily accessible public transportation route 10(14)			5	0		
Technology Feature:								
X	X	Electronic health record and computer point -of- service entry capability (including wireless tablets); Wireless nurse call/paging system including wireless devices carried by direct care staff 10(15)			4	0		

* Data comes from proposed decisions in March 2011 through December 2013. There were a total of 23 applications scored, of which 12 were for a new Nursing Home and 11 were to add beds to an existing Nursing Home.

** An applicant could score 0